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By Email and ECF

December 23, 2020

Application denied at this time. The parties are directed to appear for a telephone conference on January 19, 2021 at 12:00 p.m. at which the request for termination will be discussed. Counsel should be prepared to address what if any plans Mr. McNicholas has related to housing and support services in Pittsburgh should he move to that area. I also request that Probation Officer Courtney Cook be available to participate in the telephone conference. The parties should dial into 888-363-4749 and use access code 2682448 for the conference.

SO ORDERED:

Vernon Broderick

HON. VERNON S. BRODERICK 1/11/2021
UNITED STATES DISTRICT JUDGE

Re: United States v. Kevin McNichol
18 Cr. 727 (VSB)

Dear Judge Broderick:

This letter is respectfully submitted to request that both the pending violation of supervised release and Mr. McNicholas' period supervised release be terminated.

On May 10, 2019, Your Honor sentenced Kevin McNicholas to time served (526 days of imprisonment) and three years of supervised release. As Your Honor is aware from previous submissions, Mr. McNicholas has a long history of severe mental and substance abuse issues. The VOSR currently pending before Your Honor concerns personal drug use and not new criminal activity.

This request is being made in light of recent changes in Mr. McNicholas' circumstances. Thanks largely to the efforts Jenny Crawford, the mitigation specialist that Your Honor appointed to work on this matter, Mr. McNicholas is now receiving disability insurance payments. Now that he has a steady source of income, Mr. McNicholas would like to move to Pittsburgh, Pennsylvania where his income would permit him to get his own apartment and provide for his necessary expenses. Clearly, his limited economic resources will go further in Pittsburgh than they would in New York.

The other significant change of circumstance is a direct result of the COVID-19 pandemic. Under our current conditions, the availability of mental health and drug counseling are limited at best.

Pursuant to 18 U.S.C § 3583(e)(1) Your Honor is authorized to terminate Mr. McNicholas's term of supervised release once he has completed one year of supervised

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release and after considering the factors set out in 18 U.S.C § 3553(a), Your Honor determines that the relief is warranted and in the interest of justice.

Section 3553(a) requires Your Honor to consider the nature and circumstances of the offense which was a non-violent bank fraud. Mr. McNicholas was recruited into the fraud to open bank accounts and deposit checks. He was the lowest level participant in the offense. As discussed throughout this submission, Mr. McNicholas has a long history of serious mental illness. He has been taking his medications as directed and is able to function outside of an institutional setting. That said, Mr. McNicholas will always live on the fringe of society as his mental illness and history of drug abuse make it impossible for him to achieve the level of success that his intelligence would otherwise permit him to achieve.

As Mr. McNicholas was a low level participant who was recruited into the offense, the sentence of time served was sufficient to promote respect for the law, and to provide just punishment for the offense. For these same reasons, this is case which does not require either general and specific adequate deterrence.

The final goal of sentencing as set out is section 3553(a) is to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. As mentioned above, the pandemic has made it almost impossible to provide services to Mr. McNicholas.

I have discussed this request to terminate Mr. McNicholas' supervision and his moving to Pennsylvania with both Assistant United States Attorney Drew Skinner and United States Probation Office Courtney Cooke, who has been supervising Mr. McNicholas. I am sure that AUSA Skinner will soon inform Your Honor of the Government's position on this request. Officer Cooke provided the below view of this request via email:

While the proposed plan to move to PA makes sense, I don't feel it is enough justification for an early termination. However, it is important to note that McNicholas has made some progress towards rehabilitation. While there is still work to be done, we believe he has maximized his potential on supervised release. McNicholas will always have challenges due to his history of drug use and mental health however he learned and has shown the ability to navigate the system on his own and has secured benefits which may assist him in creating a stronger foundation. He also has the ability to navigate outpatient treatment should he choose to continue with this. Additionally, there has been no evidence of him

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engaging in criminal activity while under supervision. Therefore, we (Probation) do not oppose the early termination request. Any questions please let me know.

Mr. McNicholas has been doing the best that he can. Ms. Crawford and I assume that we have become part of his permanent support system and we expect to continue to hear from him until such time as he establishes a new support system, should that ever come to pass. In light of his new economic independence and his law abiding behavior, we respectfully request that Your Honor grant this request and terminate both the pending violation of Supervised Release and end Mr. McNicholas' supervision.

Respectfully submitted,

s/Andrew Patel
Andrew G. Patel

cc: Drew Skinner
Assistant United States Attorney (by email and ECF)

Courtney Cooke
U.S. Probation Officer (by email)

Jenny Crawford (by email)